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In the

Supreme Court of the United States

October Term, 1974

No. 74-269

Dr. Earl W. Brian, etc., et al.,

Petitioners,

vs.

California Welfare Rights Organization, et al.,

Respondents.

Brief of Amici Curiae in Opposition to Petition for Writ of Certiorari

CALIFORNIA ASSN. FOR THE RETARDED
CALIFORNIA CHILDREN'S LOBBY
N.A.S.W.
CALIFORNIA FEDERATION OF TEACHERS
CALIFORNIA HUMAN SERVICES ORGANIZATION
CALIFORNIA N.O.W.
CALIFORNIA NUTRITION ACTION COMMITTEE
CALIFORNIA NUTRITION COUNCIL
S.F. CATHOLIC SOCIAL SERVICES
CHILDREN'S FOUNDATION
FOOD ADVOCATES
DREW HEALTH RIGHTS PROJECT
FRIENDS COMMITTEE ON LEGISLATION
LIASION COMMITTEE FOR CHILD CARE
L.A. COUNCIL OF JEWISH WOMEN
SACRAMENTO Y.W.C.A.
SOCIAL SERVICES UNION, LOCAL 535
SOCIETY FOR NUTRITION EDUCATION
YOUTH LAW CENTER.

INTEREST OF THE AMICI*

The California Association for the Retarded is a 16,000 member organization concerned with problems of the mentally retarded. The *Association's* membership is composed of parents and friends of the retarded, as well as

*Pursuant to Rule 42, this brief is filed with the consent of all parties. The letters of consent have been filed with the Clerk of the Court.

professionals involved with the prevention and treatment of mental retardation.

The California Children's Lobby is a legislative lobby dedicated to providing a voice for California's children in the halls of government.

The California Council, National Association of Social Workers represents over 6,000 professional social workers in public and private service agencies.

The California Federation of Teachers, AFT, AFL-CIO is the statewide affiliate of the American Federation of Teachers, AFL-CIO, composed of 225 constituent California locals representing teachers in public and private education.

California Human Services Organization, Inc. is a voluntary organization of persons employed in public and private social agencies.

California N.O.W., which represents 47 California chapters of the *National Organization for Women,* is a nonpartisan human rights organization.

California Nutrition Action Committee is a coalition of voluntary organizations dedicated to ending hunger and malnutrition.

California Nutrition Council, is composed of nutrition leaders representing public and private state agencies who seek to prevent and alleviate nutrition problems.

Catholic Social Service of San Francisco is a family service of the Catholic Archdiocese of San Francisco.

The Children's Foundation is a nationwide organization providing technical assistance and information on problems of childhood.

Food Advocates is a federally-funded resource and advocacy project within the Department of Nutritional Sciences, College of Natural Resources, University of California, Berkeley.

The Drew Health Rights Project of the Charles R. Drew Post-graduate Medical School, Los Angeles, California, is an advocacy program for low-income health care consumers in California.

The Friends Committee on Legislation is a Quaker-sponsored organization of 4,000 members concerned with basic human rights.

The Liaison Committee for Child Care Centers in Higher Education represents some 350 campuses of institutions of higher education interested in child care.

The Los Angeles Section, National Council of Jewish Women, is a 3,400 member organization dedicated to furthering human welfare.

The Sacramento Young Women's Christian Association shares in the YWCA's concern that all people be assured equal opportunities.

Social Service Union, Local 535, SEIU, AFL-CIO is a 6,000 member labor organization of social workers.

Society for Nutrition Education is a group of professional nutrition educators.

The Youth Law Center is a federally funded program promoting juvenile law reform.

Amici represent an exceptionally broad spectrum of public and private organizations directly concerned with all aspects of child health, welfare and education in California.

Amici believe that the California Supreme Court has correctly resolved the legal issues posed in this matter. Amici presented the California Supreme Court with nutritional and medical evidence pertinent to the human issues posed by petitioners' practices. Because Amici wish this Court to be fully informed as to the specious scientific basis for petitioners' "in-kind income" claims, they submit this opposition to the petition for writ of certiorari.

ARGUMENT

Amici adopt respondents' statement of facts with the admonition that the statement is written in an extremely reserved manner considering the mental and physical jeopardy in which petitioners' practices placed the pregnant mothers and their fetuses during the period EAS § 44-115.9 was in effect.[1]

Studies by the United States Department of Agriculture show that as income decreases relative to fixed costs, the proportion of families unable to meet recommended dietary allowances increases. That is, as income is reduced, it becomes more difficult, if not impossible, to provide adequate nutrition. (USDA, *Household Consumption Studies,* 1965.) Companion studies have shown that as income, after fixed expenses, increases, the quality of the diet improves.

The implications for pregnancy due to the grant reductions occasioned by petitioners' regulations are ominous.

A substantial body of literature indicates a particularly high risk of an unfavorable pregnancy outcome among the impoverished. Petitioners' regulations reducing recipients' AFDC grant levels even further, had the effect of exposing them to grievous risk.

Impoverished pregnancies have three to five times the incidence of abnormally low weight of the infant at birth than is likely to occur in pregnancies which take place under more favorable circumstances. State Department of Public Health, Bureau of Vital Statistics, *Vital Statistics of California,* 1965-1966-1967; U.S. Department of Health, Education and Welfare, Public Health Service, *Vital Statistics of the U.S., 1965,* Vol. 2; Silverman, W.A. and J.C. Sinclair, "Current Concepts: Infants of Low Birth Weight," 274 *New England Journal of Medicine,* 448-450 (1966). The

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1. Respondents' Consolidated Brief in Opposition to Petitions For Certiorari, Nos. 74-269, 74-311, and 74-312, at pp. 8-10.

under-weight children of nutritionally inadequate pregnancies are prone to suffer the additional risks of hyaline membrane disease, neonatal hypoglycemia, mental retardation and other complications. Infants born of such pregnancies have a markedly higher incidence of infant mortality than other babies. Maternal mortality and maternal complications such as hemorrhage and toxemias are also more common in these poorly nourished mothers. Love, E.J. and R.A.H. Kinch, "Factors Influencing Birth Weight in Normal Pregnancy," 91 *American Journal of Obstetrics and Gynecology*, 342-347 (1965).

These studies are substantiated by the National Academy of Sciences in its comprehensive review of the literature and research, *Maternal Nutrition and the Course of Pregnancy* (1970) pointing out at p. 3 that "poorly nourished women who have poor diets during pregnancy tend to have more complications than do well nourished women who have good diets during pregnancy." The Academy went on to discuss the high risk to impoverished families of serious difficulties during pregnancy and the increased incidence of low birth weight and associated mental retardation of the infant.

The net result of the consistent findings of the studies is well summarized in an obstetrical journal article:

> "Although it has long been acknowledged that the potential influence of maternal nutrition on the course and outcome of pregnancy is profound, only recently has the full significance of this concept begun to be accepted, and with the realization that the future health of mankind depends, to a very large degree, on nutritional foundations laid down during prenatal life."
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> Pitkin, Roy M., Harold A. Kamietsky, Michael Newton, and Jack A. Pritchard, "Maternal Nutrition: A Selective Review of Clinical Topics," 40 *Journal of Obstetrics and Gynecology* 773 (1972).

Thus, in viewing respondents' regulations, the cost in human potential must be carefully weighed against whatever short term economic considerations have been asserted to justify petitioners' "in-kind income" claims which severely reduced the amount and quality of nutrition available to pregnant women and their unborn children.[2] In the proper administration of government the balance plainly weighs against such regulations.

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2. In hearings before the California State Senate Subcommittee on Nutrition and Human Needs, physicians testified to the false savings generated by AFDC "in-kind income" deductions. In summary, they said that the savings of no more than $45 per month a maximum of $405 over a 9 months period) must be weighed against the potential costs of intensive newborn medical care for infants who are low birth weight or otherwise damaged at birth (these costs—paid by the State's Medicaid program—range from $150-$200 per day for a period of weeks, p. 35, 75-76), the cost of extended neonatal and pediatric management, and the cost of maternal complications of inadequately nourished pregnancies. (*Hearings: AFDC Grant Cuts to Pregnant Women,* October 4, 10, 26 and November 29, 1972," Subcommittee on Nutrition and Human Needs, California Senate Health and Welfare Committee, Transcript of hearings on October 4 and 10, 1972.)

Finally, Amici would note that most expensive of all are the increased costs of education for children who, because of complications during pregnancy, suffer either mild or severe forms of mental retardation.

> "*[E]ven the most sophisticated and expensive compensatory education cannot restore a poor child's ability to compete intellectually on equal terms if that child's potential for intellectual development has been irreversibly impaired by malnutrition.*" (emphasis in original); *Malnutrition, Learning and Behavior,* Papers of the Conference on Malnutrition, Learning and Behavior (MIT Press, 1970).

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari to the Supreme Court of California should be denied.

Respectfully submitted,

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